IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.410/1996

Gurudeo Singh & Ors.
vs.
The Collector, Sri Ganganagar & Ors.

Date : 27.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SD Vyas a/w Mr.A Vyas, for the petitioner.
Mrs.RR Kanwar, Dy.GA, for the respondents.

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BY THE COURT :

Heard learned counsel for the parties.

It appears from the facts of the case that Sarva Shri Chunni Lal, Ram Lal and Kundan Lal were three brothers. The petitioners' case is that the disputed land was allotted only to Chunni Lal under the provisions of Displaced Persons (Compensation & Rehabilitation) Act, 1954 (for short 'the Act of 1954'). His successors obtained Sanad on 1.4.1966 and

thereafter sold land to the petitioners on 11.1.1977. In view of the above reasons, the petitioners became khatedar tenants of the land in question. However, Kundan Mal, brother of Chunni Lal, preferred an appeal under Section 22 of the Act of 1954 against the order dated 31.5.1971 passed by the Managing Officer, Ganganagar whereby he treated all the heirs of Chunni Lal as sole successors of Chunni Lal after the death of Chunni Lal and substituted the name of Chunni Lal with the name of heirs of Chunni Lal. Kundan Lal submitted that in fact, the land in dispute was the joint property of the three brothers Chunni Lal, Kundan Lal and Ram Lal and the Managing Officer, Ganganagar illegally declared Chunni Lal and his successors alone as the persons entitled to the land in question. This appeal preferred before the Settlement Commissioner was dismissed vide order dated 19.11.1975, copy of which is placed on record as Annex.7. In the said proceedings, the petitioners were not party and so also, receiver was appointed. The petitioners, therefore, preferred writ petition no.1605/1983 (Balveer Singh vs. Chief Settlement Commissioner, Sri Ganganagar). This writ petition was decided by this Court vide order dated 10.3.1983. This Court took note of the contention of the petitioners, who were petitioners in writ petition no.1605/1983 and are also the present petitioners, that they purchased the land by registered sale deed and the

legality and validity of the said sale deed has not been determined and they are in possession of the property in question. Despite this fact, the order Annex.6 dated 11.1.1983 was passed affecting the rights of the petitioners. This Court held that since the order dated 11.1.1983 was passed without following the principles of natural justice, therefore, is liable to be set aside. This Court directed both the parties to appear before Chief Settlement Officer (Collector), Ganganagar on 19.4.1983 and direction was issued to said authority to hear both the parties and decide the matter afresh.

It appears that the learned Collector thereafter took upon the matter by registering revision no.35/1981 again and vide order dated 20.4.1985 partly allowed the appeal of respondent Kundan Lal and set aside the order passed by the Settlement Officer cum Collector, Ganganagar and remanded the matter back to the Settlement Commissioner. While doing so, a receiver was also appointed with the direction to the receiver to take possession of the land in dispute and give the land on contract basis by auction and collect the income so that the income may be paid to the rightful junior person.

The order of appointment of receiver was challenged by preferring appeal by the petitioners before the Divisional Commissioner, Bikaner under

Section 33 of the Act of 1954. The appeal was dismissed vide order dated 19.1.1996. The petitioners are aggrieved against the order of appointment of receiver, hence, have preferred this writ petition.

The petitioners prayed that the original transferees also who have been impleaded as party but those were not impleaded as party, therefore, the petitioners sought direction from this Court in this writ petition that Annex.8 and Annex.9 be quashed and the authorities should be directed to implement the original transferees as party and thereafter decide the matter afresh.

Interim order was passed by this Court on 5.2.1996 staying the operation of the impugned orders meaning thereby, the appointment of receiver was stayed.

It appears from the record that respondent Kundan Lal died and no steps were taken in time for bringing his legal representatives on record, then this Court ordered on 1.10.1999 that the writ petition has abated against respondent Kundan Lal.

The respondents no.5 to 10 were not served despite granting time by this Court, therefore, the stay order was vacated so far as it was against the respondents no.5 and 10. But looking to the nature of the order staying the operation of the impugned orders, vacating the stay order by the order dated 9.8.2002 against the

respondents no.5 and 10 was of no effect because the respondents no.5 and 10 could not have proceeded in any manner when there was stay against the impugned order.

Today, learned counsel for the petitioners submitted that the petitioners since purchased the land by registered sale deed and the sale deed has not been cancelled and the petitioners since are in possession of the property in dispute, then the authorities should not have appointed the receiver. It is also submitted that this Court since stayed the appointment of receiver, therefore, now after 10 years, no purpose can be served by handing over property to the receiver.

It is also submitted that the appointment of receiver is required for specific purpose and if the order is not executed in time, then also, the circumstances may warrant that that order may not be given effect to. It is submitted that if the matter can remain pending for 10 years without appointment of receiver and permitting the parties who are in possession to remain in possession, then the direction can be issued to the concerned authorities to decide the dispute finally.

Looking to the limited prayer and looking to the fact that the petitioners' claim is that they are purchasers of the property from the person who, if

proved, may be the sole khatedar tenant of the land in dispute and if not proved, then also, he may be co-sharer in the land, then there appears to be no reason to dispossess the petitioner from the land who has some right, title or interest in the property. Otherwise also, normally unless a grave case is made out, even a person in defacto possession is not dispossessed by appointing the receiver.

Looking to the long dispute pending and appointment of receiver by the appellate authority after several years of the dispute, this Court deems it proper to set aside the order appointing the receiver.

In view of the above discussion, this writ petition is allowed, the orders Annex.8 and Annex.9 are set aside so far as appointment of receiver is concerned.

However, the Rehabilitation Officer, to whom the matter was remanded by the order of the Chief Settlement Commissioner dated 20.4.1985, may decide the matter as directed by the remand order.

(PRAKASH TATIA), J.

S.Phophaliya